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Name of Registered Representative:

John C. Freeman  
John C. Freeman, Registration No. 34,483

September 8, 2003  
Date of Signature

PATENT  
CASE NO. 56/350

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: )

Erich Strasser )

) Group Art Unit: unassigned

Serial No.: 09/835,293 )

) Examiner: unassigned

Filed: April 13, 2001 )

For: METHOD AND DEVICE FOR )  
DETECTION OF OSCILLATIONS )  
BY A POSITION MEASURING )  
SYSTEM )

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SEP 15 2003

OFFICE OF PETITIONS

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT  
OR, IN THE ALTERNATIVE, PETITION UNDER  
37 CFR § 1.137(b) FOR REVIVAL OF ABANDONED APPLICATION**

Mail Stop Petition  
Commissioner for Patents  
Washington, D.C. 20231  
Attn: Office of Petitions  
Petitions Information  
Crystal Park One, Suite 520

01/12/2003 AUDNDAF1 00000031 231925 09835293

01 0981453

1300.00 0P

Dear Sir:

**I. PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT  
BASED ON FAILURE TO RECEIVE NOTICE OF MISSING PARTS**

On July 7, 2003, your Petitioner received a Notice of Abandonment under 37 CFR 1.53(f) or (g) ("Notice of Abandonment"). The Notice of Abandonment asserted that the above-mentioned application (hereinafter "the '293 application") was deemed "abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on June 11, 2001. However, your Petitioner never received the Notice to File Missing Parts mentioned in the Notice of Abandonment. Since your Petitioner never received the original Notice of Missing Parts, your Petitioner requests that the holding of abandonment be withdrawn. MPEP § 711.03(c).

As mentioned in MPEP § 711.03(c), "an allegation that an Office Action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed." This section equally applies to the non-receipt of a Notice of Allowance as held in the case Delger, Inc. v. Schuyler, 172 USPQ 513 (D.D.C. 1971). While a Notice of Missing Parts is not an Office Action or a Notice of Allowance per se, it is an official paper sent by the U.S. Patent Office that requires a timely reply from the Applicant in order to

avoid abandonment of the application. Accordingly, your Petitioner believes that MPEP § 711.03(c) equally applies to the non-receipt of a Notice of Missing Parts. Based on this belief, your Petitioner petitions that the holding of abandonment of the '293 application be withdrawn for the reasons set forth below.

A review of certain events occurring on or after July 7, 2003 reveals that your Petitioner never received the Notice of Missing Parts for the '293 application. In particular, after receiving the Notice of Abandonment, the undersigned searched his firm's files regarding the '293 application and did not find the Notice of Missing Parts.

In addition, on or after July 7, 2003 the undersigned searched and reviewed the docket record of his firm regarding papers received from the U.S. Patent Office regarding the '293 application. That search showed that the Notice of Missing Parts was not received by the undersigned's firm. For example, the search revealed that the daily, manually entered log of the undersigned's firm did not contain an entry for August 11, 2001<sup>1</sup> for client matter 56/350 (see Exhibit A), which is the client matter for the '293 application<sup>2</sup>.

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<sup>1</sup> August 11, 2001 is the initial due date for the Notice of Missing parts mailed on June 11, 2001.

<sup>2</sup> Note that the log identified as Exhibit A has been redacted so as to delete references to the identity of litigation matters, the identity of inventors and attorneys and comments not related to receipt of papers from the U.S. Patent Office.

Furthermore, the search revealed that the undersigned's firm's patent database failed to show an entry indicating that the Notice of Missing Parts had been received (see Exhibit B)<sup>3</sup>.

Based on the review of the files regarding the '293 application, the log (Exhibit A) and the patent database (Exhibit B), the evidence shows that the Notice of Missing Parts was never received by your Petitioner. Accordingly, the present Petition for Withdrawal of Holding of Abandonment should be granted.

## **II. ALTERNATIVE PETITION UNDER 37 C.F.R. § 1.137(b)**

Should the above Petition for Withdrawal of Holding of Abandonment not be granted, your Petitioner requests that, in the alternative, the present Petition be treated as being based upon 37 C.F.R. § 1.137(b) for unintentional abandonment. Accordingly, your Petitioner hereby declares that the abandonment of the above-mentioned application was unintentional on his part. In addition, your Petitioner declares that the entire delay in filing a response to the Notice of Missing Parts from its due date of August 11, 2001 to the date of the filing of a grantable Petition under 37 C.F.R. § 1.137(b) was unintentional.

There is evidence that the abandonment was unintentional. As mentioned above, your Petitioner never received the Notice of Abandonment. This is conclusive evidence that

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<sup>3</sup> Note that the entry "US-INCOMPLETE APPLICATION/MISSING PARTS NOTICE" at the top of page 2 is a reminder that the Notice of Missing Parts was not received.

there was no intent to abandon the above-mentioned application.

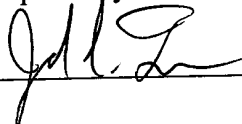
Based on the facts above, your Petitioner submits that he has shown that the abandonment of the above-mentioned application was unintentional. Therefore, your Petitioner respectfully petitions the Commissioner to revive the above-mentioned application. Your Petitioner is including: (1) the petition fee of \$1,300.00 as required under 37 C.F.R. § 1.17(m), (2) a copy of a Declaration and Power of Attorney for the '293 application, and (3) a check for \$ 894.00 to cover the payment of the filing fee of \$ 710.00, the extra claim fee of \$ 54.00 for three additional claims and the surcharge of \$130 as required under 37 C.F.R. § 1.137(b)(1)<sup>4</sup>. Items (2) and (3) are being filed in response to the Notice of Missing Parts. Should there be other items that need to be filed in response to the Notice of Missing Parts, your Petitioner requests that the items be identified and additional time to supply the items since your Petitioner does not have a copy of the Notice of Missing Parts. Your Petitioner also requests a copy of the Notice of Missing Parts be supplied so that the file of the Petitioner's '293 application can be updated. The undersigned requests that his firm's deposit account no. 23-1925 be charged for any deficiencies in the above fees.

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<sup>4</sup> The check for \$894.00 reflects the filing fees and surcharge due as of August 11, 2001, the initial due date for the Notice of Missing parts mailed on June 11, 2001. No Petition for an Extension of Time is being filed at this time since no Notice of Missing Parts was ever received. If such a Petition is required, then the undersigned petitions for the extension of time and authorizes payment of the extension fee from his firm's deposit account no. 23-1925.

Furthermore, the facts submitted previously show that the Notice of Missing Parts was never received by your Petitioner. Accordingly, your Petitioner requests that the Petition fee under 37 C.F.R. § 1.17(m) and any other fees incurred due to the failure to receive the Notice of Missing Parts be refunded to the Brinks Hofer firm, since the Brinks Hofer firm is not at fault in any way for the failure of the United States Postal Service to properly deliver the mail.

Respectfully submitted,



John C. Freeman  
Registration No. 34,483  
Attorney for Petitioner

BRINKS HOFER  
GILSON & LIONE  
P.O. Box 10395  
Chicago, Illinois 60610  
(312) 321-4200

Dated: September 8, 2003

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SEP 15 2003

OFFICE OF PETITIONS

2001

Saturday 11 August

223/143

6555/234 - file US & Foreign based on Prov. -

Final

7828/23-

PROPOSED  
7828/23-

Closed

✓ 9795/9-

FINAL

5847/12-

Transferred  
Amendment

10512/6-

Amendment

10406/6-

Amendment + Drawings

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OFFICE OF PETITIONS

9584/3-

Amendment

9281/3505-

\$1240 + Formal Drawings

✓ 7034/87-

\$1240 + Formal Drawings

9281/3585-

Issue fee \$1240

9281/3564-

FINAL AMENDMENT

115/434-

FINAL AMENDMENT

10541/30-

FINAL AMENDMENT

9281/4143 - File US App. -

Final

9281/4144 - File US App. -

Final

9281/4150 - File US App. - GS FINAL

• 10367/1711 - Tm: Touch Select - Response Due - Final

• 742/215 - IDS -

• 742/217 - IDS -

• 8700/188 -

• 9333/272 - IDS -

• 1391/1499 - Amendment & Late fee (4<sup>th</sup> mo) -

• 3716/98 - Amendment & Late fee (4<sup>th</sup> mo) & Sub. of Interview -

• 9281/3091 - Amendment & Late fee (4<sup>th</sup> mo) -

• 9281/3596 - Amendment & Late fee (4<sup>th</sup> mo) -

• 56/354 - Filing fee, Add. Claims fee, surcharge & Late fee (3<sup>rd</sup> mo) -

• 7814/44 - Filing fee, Add. Claims fee, <sup>ext'n</sup> signed Dec. surcharge & Late fee (4<sup>th</sup> mo) -

10420/15 - IDS -

• 10541/385 - Provisional - Final

9683/79 - Declaration & Late fee (4<sup>th</sup> mo) -

• 10541/560 - Provisional - Final

• 10541/501 - Provisional - Final

• 9281/4176 file US App. - final

• 9281/4190 file US App. - final

• 9281/4199 file US App. - final

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Saturday 11 August

2001  
223/143

~~10822/9 -~~

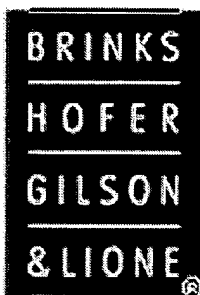
~~- Amendment + late fee (144 Max) -~~

5935/56 - IDS -

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Patent: 56-350, United States, Regular, National, Original

## Patent Data

Docket Number	56-350
Country	United States
Case Type	Regular
Relation Type	Original Filing
Filing Type	National
Filing Number	
Status	Filed
Sub Status	Pending
Parent Country	
Patent Family	
Application Number	09/835,293
Patent Number	
Publication Number	
Pay Maint Fee	Yes
Customer Code	

Supervising Atty	John C. Freeman
Agent	John C. Freeman
Agent	
Client	HEIDENHAIN GMBH, DR. JOHANNES
Assignee	
Reference Number	56-350
First Filing Date	04/13/2001
Sub Status Date	
Parent Filing Date	
Parent Grant Date	
Application Date	04/13/2001
Issue Date	
Publication Date	
Client Ref No	0967-US/Pr

## Title

MEHTOD AND DEVICE FOR VIBRATION DETECTION TO GO WITHA POSITION MEASURING SYSTEM

## Remarks

IDS MEMO SENT WITHOUT FILE ON 5-30-2001 BASED ON FOREIGN APPL. 100 18 298.4 FILED 4/13/2000

## Actions

### Actions

Action	Base Date	Action Due Date	Indicator	Completed Date	Postcard/Resp Sent Dt	Notes
US-ABANDONMENT NOTICE	07/07/2003					
File By Due Date-USA	04/13/2000	05/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000	06/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File RCT	04/13/2000	06/13/2000	Reminder			US-APPLICATION FILED / FILING RECEIPT
File By Due Date-USA	04/13/2000	07/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US

Notice Of Missing Parts	04/13/2000 07/13/2000	Reminder				PRIORITY / FILE US APPLICATION US-INCOMPLETE APPLICATION / MISSING PARTS NOTICE
File By Due Date-USA	04/13/2000 08/13/2000	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 09/13/2000	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 10/13/2000	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 11/13/2000	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 12/13/2000	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 01/13/2001	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000 02/13/2001	Reminder	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
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File By Due Date-USA	04/13/2000 04/13/2001	Final	04/13/2001			US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
Office Action Received?	04/13/2000 06/13/2001	Reminder				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
Office Action Received?	04/13/2000 07/13/2001	Reminder				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
Information Disclosure Statement	04/13/2001 07/13/2001	IDC - CPI Gen.	07/06/2001	07/09/2001		IDS
Office Action Received?	04/13/2000 08/13/2001	Reminder				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
Office Action Received?	04/13/2000 09/13/2001	Reminder				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
Office Action Received?	04/13/2000 10/13/2001	Reminder				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
Office Action Received?	04/13/2000 11/13/2001	Due Date				US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001
US-Frn. Fil. Letter Action Due	12/13/2001 04/13/2001 12/13/2001	IDC - CPI Gen.	04/13/2001			FFL
US-Foreign Convention - Utility	04/13/2002					
Foreign Filing Completed By	04/13/2001 04/13/2002	IDC - CPI Gen.	04/13/2001			FRN CONV
Published	10/13/2002					
Office Action Received?	06/30/2003					
Office Action Received?	07/30/2003					
US-PETITION TO REVIVE	08/07/2003					
US-PETITION TO	09/07/2003					

REVIVE (FINAL)

Office Action  
Received?

09/13/2003    Reminder

**Inventors**

Inventor Name    Assignment Date

STRASSER, ERICH

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**KXPP - Patent: MEHTOD AND DEVICE FOR VIBRATIO**

<b>Docket Number</b>	56-350	<b>CreateUser</b>	conv
<b>Country</b>	United States	<b>CreateDate</b>	Sep 7 2002
<b>Case Type</b>	Regular	<b>UpdateUser</b>	jrodrigu
<b>Relation Type</b>	Original Filing	<b>UpdateDate</b>	Jul 15 2003
<b>Filing Type</b>	National	<b>Responsible Atty</b>	John C. Freeman
<b>Application Date</b>	Apr 13 2001	<b>Client</b>	HEIDENHAIN
<b>Application Number</b>	09/835,293	<b>First Filing Date</b>	GMBH, DR.
<b>Supervising Atty</b>	John C. Freeman	<b>Sub Status</b>	JOHANNES
<b>Total Claims</b>	0	<b>ValidationUser</b>	Apr 13 2001
<b>Ind. Claims\Designs</b>	0	<b>ValidationDate</b>	Pending
<b>Status</b>	Filed		jrodrigu
<b>Reference Number</b>	56-350		Jul 15 2003
<b>Office Location</b>	Chicago		
<b>Pay Maint Fee</b>	Yes		
<b>Client Ref No</b>	0967-US/Pr		

**Actions**

Action	Base Date	Action Due Date	Indicator	Completed Date	Notes	Postcard/Resp Sent Dt
US-ABANDONMENT NOTICE	Jul 7 2003					
File By Due Date-USA	Apr 13 2000	May 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	Apr 13 2000	Jun 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File RCT	Apr 13 2000	Jun 13 2000	Reminder		US-APPLICATION FILED / FILING RECEIPT	
File By Due Date-USA	Apr 13 2000	Jul 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
Notice Of Missing Parts	Apr 13 2000	Jul 13 2000	Reminder		US-INCOMPLETE APPLICATION / MISSING PARTS NOTICE	

File By Due Date- USA	Apr 13 2000	Aug 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Sep 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Oct 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Nov 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Dec 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Jan 13 2001	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Feb 13 2001	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Mar 13 2001	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date- USA	Apr 13 2000	Apr 13 2001	Final	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
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Office Action Received?	Apr 13 2000	Jul 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Information Disclosure Statement	Apr 13 2001	Jul 13 2001	IDC - CPI Gen.	Jul 6 2001	IDS	Jul 9 2001
Office Action Received?	Apr 13 2000	Aug 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	

Office Action Received?	Apr 13 2000	Sep 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Office Action Received?	Apr 13 2000	Oct 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
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US-Frn. Fil. Letter		Dec 13 2001				
Action Due	Apr 13 2001	Dec 13 2001	IDC - CPI Gen.	Apr 13 2001	FFL	
US-Foreign Convention - Utility		Apr 13 2002				
Foreign Filing Completed By	Apr 13 2001	Apr 13 2002	IDC - CPI Gen.	Apr 13 2001	FRN CONV	
Published		Oct 13 2002				
Office Action Received?		Jun 30 2003				
Office Action Received?		Jul 30 2003				
US-PETITION TO REVIVE		Aug 7 2003				
US-PETITION TO REVIVE (FINAL)		Sep 7 2003				

**Remarks**

Text
IDS MEMO SENT WITHOUT FILE ON 5-30-2001 BASED ON FOREIGN APPL. 100 18 298.4 FILED 4/13/2000

**Inventors**

Inventor Name
STRASSER, ERICH

**Title**

Text
MEHTOD AND DEVICE FOR VIBRATION DETECTION TO GO WITHA POSITION MEASURING SYSTEM

**File Tracking**

File Given To	Date Given
JCF	Jul 15 2003



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